

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

October 19, 2010

Lyle W. Cayce
Clerk

No. 08-50948

Summary Calendar

UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

DANIEL ALLAN GUNNELS

Defendant-Appellant

Appeal from the United States District Court
for the Western District of Texas
USDC No. 5:98-CR-19-ALL

Before REAVLEY, DENNIS, and CLEMENT, Circuit Judges.

PER CURIAM:*

The attorney appointed to represent Daniel Allan Gunnels has moved for leave to withdraw and has filed a brief in accordance with *Anders v. California*, 386 U.S. 738 (1967). Gunnels has filed a response in which he raises claims that counsel rendered ineffective assistance and that the district court erred by denying his § 3582 motion because Amendment 709 may be retroactively applied. Additionally, he contends that his original sentence was improper and that the district court should have granted his § 3582 motion to correct it. Our

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

independent review of the record, counsel's brief, and Gunnels's response discloses no nonfrivolous issue for appeal. Accordingly, the motion for leave to withdraw is GRANTED, counsel is excused from further responsibilities herein, and the APPEAL IS DISMISSED. *See* 5TH CIR. R. 42.2.